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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STRAUSS, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	06-CV-00702 (DLI)
	:	
v.	:	
	:	225 Cadman Plaza East
CREDIT LYONNAIS, S.A.,	:	Brooklyn, New York
	:	
Defendant.	:	May 17, 2016
-----X		
WEISS, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	05-CV-04622 (DLI)
	:	
NATIONAL WESTMINSTER BANK,	:	
	:	
Defendant.	:	
-----X		
APPLEBAUM, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	07-CV-00916 (DLI)
	:	
NATIONAL WESTMINSTER BANK, PLC,	:	
	:	
Defendant.	:	
-----X		
WOLF, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	07-CV-00914 (DLI)
	:	
CREDIT LYONNAIS, S.A.,	:	
	:	
Defendant.	:	
-----X		

[Continued on next page.]

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TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE

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1 (Proceedings began at 11:08 a.m.)

2 THE CLERK: Weiss v. National Westminster Bank,
3 Docket No. 05-CV-04622; Applebaum v. National Westminster
4 Bank, 07-CV-00915; Strauss v. Credit Lyonnais, 06-CV-00702;
5 and Wolf v. Credit Lyonnais, 07-CV-00914.

6 Counsel, please state your names for the record.

7 THE COURT: Beginning with the Weiss plaintiffs.

8 MR. OSEN: Gary Osen, Osen, LLC, for the Weiss
9 plaintiffs.

10 THE COURT: And also for the --

11 MR. OSEN: And joining me are my colleagues Ari
12 Unger, Aaron Schlanger, Sean Norton and Steve Steingard.

13 THE COURT: Okay. And you also represent the
14 plaintiffs in Wolf?

15 MR. OSEN: Strauss, Your Honor.

16 THE COURT: Strauss. Okay.

17 And for the Strauss plaintiffs and Applebaum
18 plaintiffs.

19 MR. WERBNER: Your Honor, Mark Werbner for Applebaum
20 and Wolf. Those are the two cases and I'm here with
21 Mr. Nudelman.

22 THE COURT: Okay.

23 MR. FRIEDMAN: Your Honor, Lawrence Friedman, Cleary
24 Gottlieb Steen & Hamilton on behalf of Credit Lyonnais and
25 National Westminster Bank, and with me are my colleagues Avi

1 Luft, Mark Grube, Mark McDonald and Molly Calkins.

2 THE COURT: Good morning, everybody.

3 So I'd just note before we went on the record the
4 parties thought it would be -- it would simplify matters just
5 to talk about discovery in all of the cases together and I
6 had mistakenly still before I examined the docket sheet that
7 Weiss and Applebaum had proceeded on a slightly different
8 track because the case had originally been dismissed. But it
9 looks as if we're basically at the same point in discovery in
10 both cases and we need damages discovery. Is that correct?

11 UNIDENTIFIED VOICE: Well, we don't need damages
12 discovery, Your Honor, because the cases have been bifurcated
13 as between liability and damages, but we have other procedures
14 that we need to engage in before scheduling a liability trial
15 and plaintiffs' counsel and I have spoken a couple of times
16 and I'll refer to Mr. Osen to lay out the menu of what we
17 think needs to be done next and we can set a schedule for
18 that.

19 MR. OSEN: So, Your Honor, there are a couple of
20 things. First of all, from the defense side, and obviously
21 Mr. Friedman can speak to it, with respect to the Credit
22 Lyonnais case the defendant had filed previously a motion for
23 reconsideration which was vacated during the pendency of other
24 motions and in our discussions Mr. Friedman has indicated a
25 desire to renew that motion.

1 So one of the things that we'll be presenting is a
2 briefing schedule. I think we have to do it to Chief Judge --
3 I don't remember her role, but I think we have to submit a
4 letter or --

5 THE COURT: I suspect she would want a pre-motion
6 letter.

7 UNIDENTIFIED VOICE: Well, it's already past that.
8 Your Honor, if I may --

9 MR. OSEN: Sure.

10 UNIDENTIFIED VOICE: -- Mr. Osen. There were two
11 motions pending when we brought the Daimler-based [ph.]
12 motion.

13 THE COURT: Um-hum.

14 UNIDENTIFIED VOICE: That Judge Irizarry --

15 THE COURT: Oh, okay.

16 UNIDENTIFIED VOICE: -- Chief Judge Irizarry
17 recently [indiscernible]. One was a motion for
18 reconsideration of Chief Judge Irizarry's original summary
19 judgment ruling which was fully briefed in 2013 and Chief
20 Judge Irizarry took that off calendar when we made the Daimler
21 motion subject to it being reinstated if the Daimler motion
22 was denied as, in fact, it has been.

23 There is also a -- Chief Judge Irizarry also gave us
24 permission to move for summary judgment with respect to five
25 new attacks that had been added to the Credit Lyonnais case,

1 which -- three of which -- or two of which are being added to
2 the Nat West case. Your Honor may recall that Congress
3 amended the statute of limitations under the Anti-Terrorism
4 Act and there were five attacks that were previously dismissed
5 from the case that were reinstated.

6 So we had those two motions pending when Daimler was
7 handed down. Judge Irizarry allowed us to make the Daimler
8 motion since denied. So those two motions need to be restored
9 to the calendar.

10 And then there is the Nat West motion for summary
11 judgment on the two issues that Judge Irizarry did not reach
12 and, therefore, the Second Circuit remanded when it reversed
13 her decision on the scienter element of the summary judgment
14 motion, remanded that to her for further proceedings.

15 Mr. Osen and his colleagues and I spoke last week.
16 There were also amendments to the pleadings that plaintiffs
17 will tell you that they want to make to add new plaintiffs and
18 add certain attacks to the Nat West cases. And also, there
19 are additional documents that they want to produce to us, all
20 of which we need to take a look at and decide whether we want
21 to object to the untimeliness of those documents and whatnot.
22 So there are about half a dozen things that we need to do and
23 what I propose is Your Honor would like me to apprise you in
24 more detail of what those area or it might be more efficient
25 if we agreed to outside of the courthouse a briefing schedule,

1 a filing schedule for all of these amendments and pleadings,
2 submissions of new evidence and motions and submit them to
3 Your Honor for approval.

4 THE COURT: Okay. Okay. I don't conceptually have
5 a problem with that, but Judge Irizarry did file her order at
6 the end of March, so -- and I -- and we had adjourned this
7 conference to give you time to confer. I was actually
8 surprised not to get a proposed order because you would have
9 obviously known better what additional discovery was needed
10 and now you -- I had forgotten about the motions that
11 [indiscernible].

12 UNIDENTIFIED VOICE: I think in the next week or ten
13 days, Your Honor, but when I spoke with Mr. Osen immediately
14 after Judge Irizarry's order and he requested the postponed
15 adjournment, which was fine with me. Apparently there were a
16 lot of consultations that needed to be had. We are in
17 agreement as to what the steps are. It's just a question of
18 proposing schedule -- schedules, Your Honor, which I think we
19 can do fairly quickly.

20 MR. OSEN: Yeah, if it helps, Your Honor, I think
21 it -- I could very briefly sort of outline what the issues are
22 and then ultimately we'll submit a proposed briefing schedule
23 for all of them.

24 The first category involves what I'll call
25 administrative issues relating to existing plaintiffs where,

1 for example, people have died in the intervening years and so
2 we would amend for the estates or where a person was a minor
3 and has no longer -- reached majority. So we would amend to
4 sort of clean up, for lack of a better term, those kind of
5 things.

6 And then as Mister --

7 THE COURT: If you --

8 MR. OSEN: Sorry.

9 THE COURT: And certainly that can just be done by
10 stipulation, I would think.

11 MR. OSEN: Yes.

12 THE COURT: But since you're thinking about amending
13 the complaint anyway --

14 MR. OSEN: Right.

15 THE COURT: -- perhaps --

16 MR. OSEN: So that leads to the second category,
17 which is trying to create a sort of uniformity, for lack of a
18 better term, in terms of the plaintiffs and attacks in both
19 cases. So, for example, the additional -- some of the
20 additional attacks that have been added to Credit Lyonnais
21 where there's no statute of limitations issued from our
22 standpoint would be added into Nat West. That doesn't itself
23 necessarily require additional discovery, although obviously
24 the defendant is entitled to reserve its rights with respect
25 to whether it determines it needs an additional deposition or

1 an expert on that particular attack or what have you. And we
2 can set that forth when we deal with the additional attacks,
3 which in Nat West consist of two that were added to Credit
4 Lyonnais and that's the Pat Junction attack and the Ben-Yehuda
5 bombing in December of 2001.

6 In addition, because so much time has lapsed since
7 we last saw you and there have been literally years of
8 intervening motions, so what we told the defendant in our meet
9 and confer is that we really want to go back and look through
10 and have begun the process of looking through the production
11 that was made in those cases and obviously we had the same
12 plaintiffs and the same attacks in the Arab Bank trial. We
13 want to make sure that they have comprehensive up-to-date
14 discovery on our end. We're not talking about third-party
15 discovery or discovery from the defendant, but materials that
16 have been obtained either chronologically subsequent to
17 disclosure of discovery, things that are within our Rule 26
18 obligation to supplement and so forth.

19 I don't believe that any of that affects or I'd say
20 with one exception I don't believe it affects any of
21 Mr. Friedman's prospective motions, but we thought he was
22 entitled to see the totality of it before he -- so he could
23 make that independent judgment.

24 THE COURT: So these are disclosures concerning the
25 plaintiffs or also additional information about the various

1 incidents --

2 MR. OSEN: Well, the one example --

3 THE COURT: -- [indiscernible] claims.

4 MR. OSEN: -- that came to mind, that's where it
5 started the thought process, was we had an issue in the Arab
6 Bank trial with respect to one of the attacks that was subject
7 to Rule 59 challenge. And Judge Kogan had actually granted
8 relief to the defendant as to two of those attacks, one of
9 which is in the present actions and that's the Bus 19 bombing
10 of 2004.

11 And one of the issues that related to that attack
12 was the fact that there's a -- we contend -- I think the
13 record will show there's a typographical error in the
14 conviction of one of the assailants in that case. And
15 therefore, in the post-trial proceedings we filed a motion for
16 reconsideration and we attached the original indictment upon
17 which the conviction was based. That indictment makes clear
18 that the individual was charged as a Hamas assailant which, of
19 course, is relevant to these proceedings.

20 That attack is also the subject of Mr. Friedman's
21 motion for reconsideration and so that's the sort of document
22 I envision providing him before he makes his motion so he can
23 challenge it in whatever form he wishes, but he should have
24 the benefit of it. It's on the docket, but -- in the other
25 case, and he may have it but we want to make sure anything

1 like that is in his possession.

2 THE COURT: So that's as to one of the two attacks
3 that were dismissed by Judge Kogan?

4 MR. OSEN: Correct.

5 THE COURT: Okay.

6 MR. OSEN: And it's in -- it's actually in all four,
7 I believe, of the pending cases here.

8 THE COURT: Okay. Is there an overlap in the
9 plaintiffs?

10 MR. OSEN: Everyone who is in Credit Lyonnais and
11 Nat West was in Arab Bank, but not everyone who is in Arab
12 Bank is in these four pending cases.

13 THE COURT: Okay. Okay. So there's no need for a
14 collateral estoppel motion that could come into --

15 UNIDENTIFIED VOICE: Well, there may be, Your Honor,
16 with respect to this very issue. Judge Kogan ruled that the
17 evidence was insufficient to establish Hamas' responsibility
18 for this attack. We may take the position that that ruling
19 is -- collateral estops these plaintiffs from pressing ahead
20 with that attack in these cases and, if I understand what
21 Mr. Osen is referring to, they believe they have evidence that
22 might counter that and it's something that will need to be
23 worked out.

24 THE COURT: Okay.

25 UNIDENTIFIED VOICE: Over time.

1 MR. OSEN: In the -- I'm sorry.

2 THE COURT: You told me that by adding the two
3 additional attacks in the Weiss case that you won't need
4 additional discovery of the defendants?

5 MR. OSEN: No. The only issue is because of the
6 convoluted and lengthy history of these cases and their
7 overlap, some of our experts already opined on some of the
8 attacks previously, but because of the procedural sort of
9 staging of the cases there may be a gap for one attack where
10 they -- the defendant has not had the opportunity to depose
11 one of our experts on the -- that specific attack. So even
12 though there's expert report they've had on the same attack,
13 they may seek to have a sort of narrow deposition on that
14 question.

15 UNIDENTIFIED VOICE: If I may, as Mr. Osen said, he
16 told me last week that for one of these two added attacks
17 there's another expert opinion and they may either object to
18 that completely as untimely or if I don't -- I may need to
19 take a short deposition of that expert.

20 With respect to the additional documents that
21 Mr. Osen is referring to given to us as we discussed and
22 agreed, he will give me those documents and give me an
23 opportunity to review them and I will then have to consider
24 whether I object to the production of those documents and
25 discovery -- fact and expert discovery is ended three -- and

1 ended four -- three years ago.

2 But if I don't make that objection or if I do object
3 and that objection is overruled, I may need to take additional
4 discovery based on those documents. Mr. Osen assures me he
5 doesn't think so, but time will tell.

6 MR. OSEN: Well, I've got to speak to that. I can
7 only talk to the question of whether they specifically relate
8 to the subject matter of his prior motion. So, for example,
9 you know, we will produce as part of discovery the subsequent
10 consent order is entered into by these defendants with respect
11 to violations of trading with the Enemy Act and violations of
12 U.S. sanctions law and so forth.

13 Whether that material changes anything from their
14 standpoint in terms of their motions, I doubt it, so we don't
15 intend to proffer them for summary judgment purposes, but to
16 me that's a sort of separate issue process-wise from whether
17 there'll be admissible at trial or not. That's something they
18 can address. If it's on our ultimate exhibit list, they can
19 move and eliminate at that point.

20 I'm at this point, Your Honor, just focused on what
21 effects a pending motion practice and wanting the defendants
22 to have the benefit of whatever materials we have that's been
23 acquired since we last convened years ago so they can assess
24 whether they have to address any of that in their, you know,
25 anticipated motions.

1 UNIDENTIFIED VOICE: I appreciate that and I
2 understand that. I don't know what you were referring to
3 about sanctions violations something [ph.] that -- we can talk
4 about that offline. But it may be that my first response to
5 one or more of these documents is they would affect the
6 motions but the threshold issue is whether you're allowed to
7 put them in the record now because of the time that has passed
8 and I suggest we cross that bridge when we come to it when I
9 see the documents. And the schedule that we can give to Your
10 Honor after today, one of the milestones in the schedule can
11 be a date for Mr. Osen to make these documents available to
12 us.

13 MR. OSEN: That's fine.

14 UNIDENTIFIED VOICE: And then after he produces
15 these documents, after he amends his pleadings in the way he's
16 described, I think, Mr. Osen, you admitted that there -- new
17 plaintiffs you're going to add to the complaints as well.

18 MR. OSEN: Well, by definition when we add the Nat
19 West and new attacks --

20 THE COURT: Right, right.

21 MR. OSEN: -- they'll have plaintiffs associated
22 with --

23 UNIDENTIFIED VOICE: And I told Mr. Osen I have no
24 objection to the addition of those new plaintiffs subject to
25 his representations made that none of them were new plaintiffs

1 in the liability trial, which means we don't have to depose
2 them now. And then when all the facts are done, Your Honor,
3 we can again lay this all out on the schedule. We will
4 proceed with the three motions, two of which were suspended in
5 the Daimler motion and then the Nat West motion. And again, I
6 think Mr. Osen and his colleagues can get on the phone very
7 quickly and work out a schedule for all of these matters.

8 MR. OSEN: So there -- one more motion to add, log
9 to the fire, and we've advised defense counsel of this, is
10 that we do intend to file a motion to consolidate the two
11 cases for trial, which the defendant will oppose, and we'll
12 have a briefing schedule for that as well.

13 THE COURT: Okay. It might be premature if you're
14 going to have the dispositive motions to brief, but it's
15 certainly something if it's worth bringing to Judge Irizarry's
16 attention now because it's always good to focus on -- to know
17 what's looming in the background as you determine --

18 MR. OSEN: Well, the issues that are subject to
19 reconsideration and so forth and summary judgment do not deal
20 with the defendants' conduct, that is, the scienter aspect of
21 it. So whatever affects the ability of claims going forward,
22 such as whether Hamas committed the attacks, admissible
23 evidence of that or approximate cause would apply equally in
24 both cases, so we think it makes sense to raise it at this
25 juncture.

1 UNIDENTIFIED VOICE: And we can agree on a briefing
2 schedule, but we will oppose the consolidation of the highly
3 prejudicial defendants to have to defend themselves in the
4 same trial and any savings in time would be most minimal.
5 These cases -- we then request some time to having to
6 consolidate, but we will agree to a schedule on the briefing.

7 THE COURT: All right. I think you will have to put
8 that in a pre-motion letter with Judge -- addressed to Judge
9 Irizarry, so you can time that letter in conjunction with your
10 other letter happily advising her that she has three more
11 motions to decide.

12 MR. OSEN: Probably figured once there were three, a
13 fourth one would not materially change the --

14 THE COURT: Right. Well --

15 MR. OSEN: -- [indiscernible].

16 THE COURT: I think it's good to put it on the
17 table. She may not decide it first. Obviously it makes sense
18 for her to decide the other motions first.

19 UNIDENTIFIED VOICE: So I think plaintiffs' counsel
20 and I can strive to get a proposed scheduling order in to Your
21 Honor before we all break for the Memorial Day weekend, if
22 that suits the Court for the end of next week?

23 THE COURT: Yes.

24 MR. OSEN: Yeah, I think that's --

25 THE COURT: So the 26th?

1 UNIDENTIFIED VOICE: Sure.

2 UNIDENTIFIED VOICE: Think it would be the 27th,
3 Your Honor.

4 THE COURT: The 27th is the Friday, so --

5 UNIDENTIFIED VOICE: Yeah. So we'll get --

6 THE COURT: -- it's an -- do you need the extra day?

7 UNIDENTIFIED VOICE: No, we can --

8 THE COURT: You said ten days, so --

9 MR. OSEN: I think the 26th.

10 UNIDENTIFIED VOICE: We can aim for the 26th.

11 MR. OSEN: We'll achieve that.

12 THE COURT: If you file it on the 27th, don't bother
13 sending me a letter. I'll be here on the 27th. I set
14 aspirational goals sometimes.

15 UNIDENTIFIED VOICE: Thank you, Your Honor.

16 THE COURT: Now, at a conference a long time ago I
17 had expressed some concern about total bifurcation of
18 discovery and delay of discovery. I -- on damages it's hard
19 for me to see -- well, to say competently that cases, you
20 know -- certainly Nat West won't go to trial, but I haven't --
21 you know, [indiscernible] motion papers and at this point I
22 would like you to think about ways of collecting more
23 information on damages and it's changing it so that you'll be
24 in a position should the case go to trial on liability. You
25 know, you'll be better focused on what ultimately -- where

1 ultimately you're going to go and then more significantly I
2 think some damages discovery is usually because I do think
3 this might be a good time to talk about settlement again.

4 UNIDENTIFIED VOICE: Well, Your Honor, on settlement
5 we need to have proposed --

6 THE COURT: Okay. You want to go off the record on
7 this? I mean, we can record this, but we'll seal this part of
8 it.

9 UNIDENTIFIED VOICE: I think we have to go off
10 record.

11 THE COURT: Okay.

12 UNIDENTIFIED VOICE: We have proposed to plaintiffs'
13 counsel that they make a new settlement demand, each of Credit
14 Lyonnais and Nat West. I'll remind the Court that when we
15 discussed settlement in 2013 Nat West was not a party because
16 the case at that point had been dismissed and had not yet been
17 reinstated by the Second Circuit.

18 As Your Honor knows, when we talked about settlement
19 just with Credit Lyonnais in 2013, the gap did close -- did
20 shrink somewhat. Not a lot, but somewhat. They made demands.
21 They made a plaintiff-by-plaintiff demand and the bank
22 responded. We went for two rounds. We've asked them to make
23 another demand. There's a major event that has occurred.

24 THE COURT: Yes. The Arab Bank case.

25 UNIDENTIFIED VOICE: The Arab Bank case. And I

1 don't have any definitive information about the terms of that
2 settlement other than what I read in the press, but the press
3 reports are that the plaintiffs achieved a settlement
4 involving payment of a billion dollars.

5 Well, if that's the case, there has to be a dollar-
6 for-dollar offset for whatever is recovered by each of these
7 plaintiffs from Arab Bank and I would have expected that the
8 plaintiffs would be willing to make a revised settlement
9 demand of both banks. Both Credit Lyonnais and Nat West have
10 invited revised settlement demand, which I would expect to be
11 lower than it was in 2013 if what I understand from the press
12 there has been or will soon be this very substantial billion-
13 dollar recovery by plaintiffs. Again, specific amounts were
14 listed for each plaintiff. To the extent each of those
15 plaintiffs has recovered or is scheduled to recover funds from
16 Arab Bank against those amounts that there has to be an
17 offset.

18 Obviously, everyone agrees you can't be compensated
19 twice for the same injury, so I'm hoping that -- I was hoping
20 until last week that I would get a revised settlement demand
21 from each. I was told there would be a revised settlement
22 demand for Credit Lyonnais and that the plaintiffs -- well,
23 I'll leave it at that for now.

24 I did get a communication this morning about the
25 possible proposal with respect to Nat West, but that's where

1 we stand. I've made clear to both -- to both plaintiff groups
2 that both Credit Lyonnais and Nat West invite or revised
3 demands reflecting the impact of the Arab Bank settlement.

4 MR. OSEN: I don't think it will surprise the Court
5 to learn that we take a very different view of the impact of
6 not just the Arab Bank trial, but also the Sokolov case --

7 THE COURT: Yes. There's -- that was --

8 MR. OSEN: -- the damages awarded in those cases
9 that admittedly involving verdict rather than settlement. We
10 did indicate to Mr. Friedman that we will endeavor to put
11 together what we hope is a creative proposal with respect to
12 Nat West. Obviously we have both based on what you've heard
13 and what you've seen previously low expectations of success in
14 that regard, but we're certainly willing to try. We don't see
15 any advantage or benefit to the parties in wasting time,
16 especially with what looks to be another round of extended
17 briefing on other issues, so we'll put together something for
18 the defendant Nat West since they haven't participated
19 previously in these kinds of discussions and, you know,
20 hopefully that client is briefed on and has the benefit of not
21 just the press reports but the Sokolov verdict as well to
22 focus their minds on the proposal that we'll be making in the
23 next ten days or so.

24 THE COURT: Well, I think I -- it is useful to
25 consider the fact that there are settlements -- one verdict

1 and some default judgments, too. I mean, I don't know how
2 likely it is. I don't know if there's an overlap.

3 MR. OSEN: I'm sorry, between -- overlap in
4 the plaintiffs --

5 THE COURT: Yes, there were a couple of default
6 judgments in some terrorism-backed cases. Are any of the
7 plaintiffs involved?

8 MR. OSEN: Some of our plaintiffs in these actions
9 are -- actually received a verdict in Sokolov.

10 THE COURT: Yes.

11 MR. OSEN: And obviously everyone in the four cases,
12 the plaintiffs were in the Arab Bank trial as well, so I think
13 we have a fairly good idea what the range of damages are and
14 also obviously what the settlement numbers are likely to be.

15 So in short, we'll be conferring with the defendant
16 Nat West and will make a proffer to them I think within the
17 next ten days.

18 THE COURT: Okay. So whatever your view of a
19 settlement value of the claims in these four cases, I would
20 think that you have to account for a setoff of any recovery.

21 MR. OSEN: We per -- I can't speak for Mr. Werbner.
22 We personally don't in terms of settlement. We do certainly
23 in terms of verdict. Any verdict that is in force against the
24 defendant obviously as an offset as you can only collect once.
25 To the extent that we are dealing with claims that are

1 catastrophic injury trebled by statute, I can say without
2 getting into the details that there's no meaningful setoff
3 from our view to any client in the settlement context.

4 UNIDENTIFIED VOICE: Your Honor, as I said to
5 Mr. Osen last week when he made that distinction in the
6 telephone conversation with me, that doesn't make any sense to
7 me. I understand what he's saying that in a catastrophic
8 injury case or a death case the sky's the limit as to what
9 they will ask the jury for and, therefore, a settlement they
10 received from Arab Bank should not be an offset.

11 But coming back to the real world, they presented to
12 us and to Your Honor in 2013 specific amounts on a plaintiff-
13 by-plaintiff basis. That is what the plaintiffs represented
14 at the time would be fair compensation to them for their
15 injuries. Now anything they have received in the interim
16 should be offset against that; otherwise, it does not reflect
17 well on the credibility of what they proposed in 2013.

18 So I think we're all agreed that you can only be
19 compensated for an injury once. The plaintiffs asked for
20 compensation in 2013. They gave amounts. If there are
21 amounts that have been collected against that in an honest
22 settlement process there should be offsets. And this notion
23 that there is an offset for a verdict but not for a
24 settlement, with due respect that smacks of a certain amount
25 of gamesmanship looking towards what a jury might award later

1 on. My clients, Credit Lyonnais engaged in -- we've made
2 settlement negotiations based on the amounts he presented.
3 Those amounts should now be reduced if this is an honest
4 settlement process.

5 I'll also note, Your Honor, that while Mr. Osen has
6 said and I appreciate his telling us that there will be a
7 settlement proposal made with respect to Nat West, he did not
8 refer to Credit Lyonnais and I don't understand why there
9 would not be another settlement proposal made with respect to
10 Credit Lyonnais.

11 MR. WERBNER: I don't --

12 THE COURT: Wait. Yeah, go ahead. I -- you've
13 been --

14 MR. WERBNER: Well --

15 THE COURT: -- strangely quiet so far, Mr. Werbner,
16 so I'll give you a chance to talk.

17 MR. WERBNER: Thank you, Your Honor. I just haven't
18 been in a case where the defendant gets to sort of dictate
19 what's a reasonable settlement and who's acting in good faith
20 and what they must do because of what they did in a certain
21 prior year. And there's all kinds of things that go into
22 strategies toward a settlement. And if the Court directs us
23 to engage in settlement, it will be done in good faith. That
24 happens all the time.

25 But for the defendant to say, you gave us a number,

1 you know, two or three years ago and now we want you to give
2 us a lower number because we think that the settlement
3 would -- needs to be fair in this way, that's just not how the
4 process works. And I think that I'm not commenting for very
5 specific reasons on what the settlement was or what's been
6 paid or what will be paid or what the amounts are. But if
7 these people were demanding because of the catastrophic nature
8 of their losses, daughters killed, husbands killed, you know,
9 10, 12, 15 million dollars, and asking juries for amounts in
10 excess of that, the fact hypothetically that a person received
11 a million dollars doesn't mean after that offset is applied
12 there isn't a huge amount in controversy.

13 So even if there is a credit given the defendant
14 down the road, we still have fundamental differences about the
15 liability facts and about what a jury would award to those
16 particular families who suffered those losses. So --

17 THE COURT: Well, okay. Now, I -- thanks for
18 summing it up, but anyway, I view settlement in each case as a
19 process that's -- it's a process and certainly can build upon
20 what's in the past. But as you all know when nobody signs on
21 the dotted line, then you start afresh. I think it's
22 unrealistic for the plaintiffs to rely on the Sokolov verdicts
23 because each case is different.

24 I'm not quite as familiar with the facts in the
25 Sokolov case, so I really can't make any opinion. I know in

1 the Arab Bank case the defendant wavered considerably under
2 the earlier preclusion order that was in place and, you know,
3 the risks are much greater in these two cases. I say two
4 cases. Actually, four cases, but we're dealing with Nat West
5 and Credit Lyonnais, so it -- it is always I think to the --
6 the benefit of the plaintiffs -- to the benefit of the
7 plaintiffs to look at settlement as you yourselves have
8 recognized. You know, we are years off from any trial on
9 damages and I don't think it's in the interests of any
10 plaintiff to wait five years. And maybe you'll get a verdict
11 as big as Sokolov, but that's -- maybe not. I think there's a
12 good chance that it will be lower. It just depends on the
13 jury; depends on how the evidence presents. The conduct of
14 the bank is different and it's foolish not to take this
15 opportunity to reassess.

16 And so you're putting all your hopes on the nice
17 big, fat verdict you've gotten. The defendant is relying on
18 the analysis of the plaintiffs early on before there was any
19 verdict and I mean, you have to be realistic, defendants, that
20 now the plaintiffs are in a very different position. But
21 ultimately, the whole point of these cases is if there is
22 liability to compensate the plaintiffs and you would really be
23 doing your clients a great disservice on both sides by not
24 taking a step back and looking at whether or not it would be
25 in their interests to just change -- to come forward with some

1 sort of demand or offer that might interest the other side to
2 engage in more meaningful discussions. You know, the Arab
3 Bank was -- had the added incentive of a nice, big finding of
4 liability, but that's not quite as clear in these cases here.

5 So I think you ought to reassess and I don't think
6 you should use the Sokolov verdict -- verdicts as the basis
7 for your settlement demands. I assume whatever settlement is
8 reached in the Arab Bank case it will be clothed in
9 confidentiality, but, you know, we -- you know, I agree with
10 the plaintiffs to a certain extent talking about numbers is
11 not a precise science and it may be unfair to bind the
12 plaintiffs to what was their settlement demand years ago.
13 But, you know, the law has changed and the circumstances have
14 changed. And, you know, as you know we -- the law and
15 causation and, you know, the tie between conduct and damages
16 is slowly narrowing. Maybe not so slowly, but everybody
17 should just take a look and see if it benefits your client to
18 tell them to relent a little bit in their settlement
19 positions.

20 So maybe what makes sense is after you send the
21 schedules I'll take a look and maybe you should propose some
22 dates for a further conference to explore settlement.

23 MR. OSEN: We can certainly at a time we're at 26th
24 the defendant will have the benefit of our Nat West proposal,
25 take them and assess the utility of proceeding further.

1 THE COURT: Yeah, and plaintiffs, too. You know, I
2 don't know what is to be gained by continuing this litigation
3 and the most the plaintiffs can hope for is that there will be
4 claims remaining after the motions are decided and then you're
5 going to put your clients to discovery about their injuries
6 and put them before a jury. I -- maybe that's what they want
7 to do, but I would think that the majority of them, they do
8 not want to do that and they would like to bring closure.

9 MR. OSEN: I can only speak for my clients, Your
10 Honor, but the vast majority of them are principally
11 interested in a liability verdict. That's a matter of
12 principle for them. They view what they do in these cases as
13 a matter of public policy as private attorneys general. And
14 so while certainly they have other considerations as well,
15 that's not an insignificant factor for them.

16 THE COURT: I would think that a settlement of some
17 magnitude may certainly satisfy their need for affirmation of
18 their position. Anyway, that's -- it -- it's -- to me, it's
19 just a needless expenditure of time if we can get the parties
20 to settle. I mean, both sides have to move substantially.

21 Anyway, we'll see what you come up with in your
22 proposed schedule and I'd like you to add a settlement
23 conference to that schedule, but call my chambers first on any
24 proposed date.

25 UNIDENTIFIED VOICE: We will do that, Your Honor.

1 THE COURT: I'll have to disclose, of course,
2 needless to say, we will be in touch with Judge Kogan's
3 chambers.

4 UNIDENTIFIED VOICE: I'm sorry, Your Honor?

5 THE COURT: We will be in touch with Judge Kogan's
6 chambers to monitor the progress in the Arab Bank settlement.

7 UNIDENTIFIED VOICE: And we should clear the date
8 for the settlement conference with Mr. Perchansky before
9 submitting it?

10 THE COURT: Might as well or you can propose some
11 dates. I --

12 UNIDENTIFIED VOICE: Okay.

13 THE COURT: Before I have some time in June, but you
14 know my dance card gets filled up quickly.

15 UNIDENTIFIED VOICE: Thank you, Your Honor.

16 THE COURT: Okay.

17 (Proceedings concluded at 11:50 a.m.)

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1 I certify that the foregoing is a court transcript
2 from an electronic sound recording of the proceedings in the
3 above-entitled matter.

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7 Ruth Ann Hager, C.E.T.**D-641

8 Dated: May 17, 2016
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